

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARIO CAVIN,

Plaintiff,

v.

BRANDON MCBRIDE,

Defendant.

Case No. 20-12470

Honorable Shalina D. Kumar

Magistrate Judge Anthony P. Patti

**ORDER ADOPTING REPORT AND RECOMMENDATION (ECF NO. 48)
AND GRANTING IN PART AND DENYING IN PART DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT (ECF NO. 38)**

Plaintiff Mario Cavin (Cavin), an incarcerated individual proceeding pro se, sues defendant Brandon McBride (McBride), alleging that McBride retaliated against Cavin multiple times at Macomb Correctional Facility in violation of the First Amendment, the Michigan Constitution, and the Elliot-Larsen Civil Rights Act. ECF No. 31. This case was referred to the assigned magistrate judge for all pretrial purposes. 28 U.S.C. § 636(b)(1)(B). ECF No. 32.

McBride filed a motion for summary judgment, which was fully briefed. ECF Nos. 38, 43, 44. On January 31, 2024, the magistrate judge issued a Report and Recommendation (R&R). ECF No. 48. The R&R

recommends that the Court denies in part McBride's motion for summary judgment because the evidence sufficiently creates triable issues regarding Cavin's claims. *Id.* The R&R recommends the motion be granted in part because Cavin cannot show that McBride retaliated against him for this lawsuit. *Id.* At the conclusion of the R&R, the assigned magistrate judge advised the parties that they may object to and seek review of the R&R within fourteen (14) days of the date the R&R was issued. *Id.* After 14 days, neither party has filed objections to the R&R.

The Court has reviewed the record. It hereby **ADOPTS** the R&R and enters it as the findings and conclusions of the Court.

Accordingly,

IT IS ORDERED that McBride's motion for summary (ECF No. 38) is **GRANTED IN PART AND DENIED IN PART**. The Court finds there is sufficient evidence to create triable issues regarding Cavin's claims, but Cavin must rely on his grievances, not this lawsuit, to establish "protected conduct."

IT IS FURTHER ORDERED that this case be referred to the assigned magistrate judge for a settlement conference.

Dated: February 26, 2024

s/ Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge